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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/816,850 | 04/05/2004 | William W. Keller | 119544-00101 | 3133 |
| 27557 | 7590 | 03/06/2006 | EXAMINER | |
| BLANK ROME LLP 600 NEW HAMPSHIRE AVENUE, N.W. WASHINGTON, DC 20037 | | | SAYALA, CHHAYA D | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 1761 | |

DATE MAILED: 03/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/816,850

Applicant(s)

KELLER ET AL.

Examiner

C. SAYALA

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12/23/2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5-14 and 16-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-14 and 16-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1, 3, 5-9, 14, 16-19 are rejected under 35 U.S.C. 102(b) as being anticipated by EP 474992.

The patent teaches adding lignosulfonate and calcium carbonate to poultry manure. The amount of manure is 30-60%, Lignosulfonate is 1-20% and limestone is 0-40%. The phosphate content in the final product is given as 0-20%. Note that “fertilizer” is a use terminology and it is well established that the discovery of a new property or use of a previously known composition, even when that property and use are unobvious from the prior art, cannot impart patentability to claims to the known composition. In re Spada, 15 USPQ 2d, 1655. The newly added limitation of total nitrogen content and phosphorus content would have been inherent, because raw poultry shows such amounts to be present (see specification at Table 1 and the reference cited on PTO-form 892) and addition of calcium carbonate and binder would not change such amounts as claimed by the above limitations.

2. Claims 1, 3, 8-9 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Ethington Jr. et al. (US Patent 6726941).

The disclosure of Ethington anticipates the claims since the patent shows mixing dried poultry waste, lignosulfonate and dolomitic limestone. See claims 3, 29; col. 9, lines 35+, col. 18, line 47, col. 19, line 23. The newly added limitation of total nitrogen content and phosphorus content would have been inherent, because raw poultry shows such amounts to be present (see specification at Table 1 and the reference cited on PTO-form 892) and addition of calcium carbonate and binder would not change such amounts as claimed by the above limitations.

3. Claims 1-2, 8-13 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Connell (US Patent 6461399).

The patentee teaches using poultry manure (col. 4, line 60), treating it with calcium carbonate (col. 4, lines 6 and 8), and grinding and blending the two. Col. 4, lines 38-40. A binder, lignin sulfonate is also used to make a prilled product (col. 7, lines 37-65). Note figures 2 and 3, which show the raw product is fed into a drier to reduce the moisture content (col. 7, lines 41-43). Note the screening step at col. 8, line 10+. Dolomitic limestone is said to be the most common form available and use (col. 4, lines 10-20). The newly added limitation of total nitrogen content and phosphorus content would have been inherent, because raw poultry shows such amounts to be present (see specification at Table 1 and the reference cited on PTO-form 892) and addition of calcium carbonate and binder would not change such amounts as claimed by the above limitations.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-3, 5-7, 14, 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kazemdeh (US Patent 5772721).

Kazemdeh teaches all aspects of this invention. At col. 5, line 20, he teaches dried poultry waste, adding a binder which can be lignosulfonate (col. 3, line 57), and calcium carbonate, which is said to reduce bulk density of the finished pellets and reduce odor (col. 3, lines 5-10). The mixture is pelletized to a fertilizer. See col. 7, lines 25-29. The reference is applied under 35 USC 103 since no one example or claim discloses all the limitations together; however, it would have been obvious to one of ordinary skill in the art to follow the teachings of this reference and combine the lignosulfonate binder, the limestone and poultry waste. Poultry waste would have the same total nitrogen and phosphorus content as claimed and this would have been obvious to the routineer at the time the invention was made.

5. Claims 3, 5-7, 14, 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Connell in view of Staples (US Patent 5730772) and further in view of

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Cook (US Patent 2597457), Doughty (US Patent 462476) and Thomas et al. (US Patent 4405354).

The patent is as discussed above, but it fails to disclose any amounts. The amount of N in poultry litter is taught as being between about 3 and about 7% after drying, by Staples. The patents to Cook, while teaching that limestone reduced "the ammoniacal poultry odors to a marked degree, col. 3, lines 4-5, Doughty notes that even as far back as 1891, it was known that limestone when added to waste/manure provided benefits such as preventing fermentative changes, preserving manorial value and transforming the mass to an odorless fertilizer (col. 1, lines 43-46). Such benefits can be reasonably expected to extend to poultry manure also.

Therefore the addition of calcium carbonate would be expected to preserve the manurial value of the poultry waste of the Connell patent. Since Staples teaches a N content in poultry waste as being about 3%, then the limitation "about 2.5%" would have been obvious to one of ordinary skill in the art at the time the invention was made. Furthermore, the EP patent abstract and the Thomas patent render not only the amounts of calcium carbonate obvious but also the use of the lignosulfonate as a binder. At col. 5, lines 20-24, Thomas teaches using 0-5% lignosulfonate, while the EP patent teaches 30-60% poultry manure and 0-40% limestone. As stated at col. 4, line 66 to col. 5, line 6 in Connell:

"The relative ratio of each component is based upon the desired end product formulation, as prescribed for a specific soil and crop need for the fertilizer application. This assessment of soil deficiencies versus crop nutrient needs can be made by any person skilled in the art of making such analyses. Typically, these persons are specialists in horticultural science, and often associated with university agricultural extensions."

Therefore, to optimize amounts of these additives so as to obtain a final phosphorous content of about .35% would have been well within the realm of ordinary skill, as evidenced by this teaching of Connell, which is particularly pertinent since it establishes the level of skill in the art at the time was made.

Response to arguments

Applicant's arguments filed 12/23/05 have been fully considered but they are not persuasive.

With regard to the EP patent, applicant states that the patent fails to disclose the N and P content as claimed. Page 7 of the specification shows that these amounts are inherent to raw poultry litter. See also the reference cited on PTO-form 892 (last page of reference). Further, applicant states that the reference adds phosphates. The addition of phosphates is not excluded by the instant claims or specification.

As for the remaining arguments traversing the other rejections, they are all based on the total nitrogen content and phosphorus contents of the poultry waste fertilizer. The newly added limitation of total nitrogen content and phosphorus content would have been inherent, because raw poultry shows such amounts to be present (see specification at Table 1 and the reference cited on PTO-form 892) and addition of calcium carbonate and binder would not change such amounts as claimed by the above limitations. Furthermore, Connell's statement that additional phosphorus may be added to the fertilizer "to supplement the phosphorus content of the final product" does not

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take away from the reference's teaching the **final product itself**. The addition of more phosphoric acid to the final product to increase the P content is a mere recognition of something any practitioner who is working with poultry litter as fertilizer would have done since references such as the one cited (Mitchell) would have rendered obvious that the P content of a fertilizer obtained from poultry litter would contain low P.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. SAYALA whose telephone number is 571-272-1405.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



C. SAYALA
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